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## TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

18

Application Number

10/033,178

Filing Date

First Named Inventor

Jean Michel Lerdu

Art Unit

Examiner Name

Attorney Docket Number

189-003.001 Hamelin

### ENCLOSURES (Check all that apply)



Fee Transmittal Form



Fee Attached



Amendment/Reply



After Final



Affidavits/declaration(s)



Extension of Time Request



Express Abandonment Request



Information Disclosure Statement



Certified Copy of Priority Document(s)



Reply to Missing Parts/  
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Reply to Missing Parts  
under 37 CFR 1.52 or 1.53



Drawing(s)



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After Allowance Communication to TC



Appeal Communication to Board  
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Appeal Communication to TC  
(Appeal Notice, Brief, Reply Brief)



Proprietary Information



Status Letter



Other Enclosure(s) (please identify  
below):

Acknowledgment Postcard

Remarks

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Reg. No.

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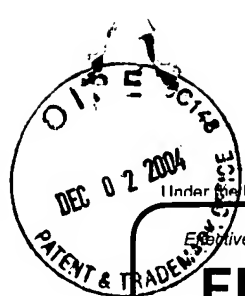
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**FEE TRANSMITTAL  
For FY 2005**☐ Applicant claims small entity status. See 37 CFR 1.27TOTAL AMOUNT OF PAYMENT (\$)**340.00****Complete if Known**

Application Number	10/C33,178
Filing Date	
First Named Inventor	Jean Michel Lerdu
Examiner Name	
Art Unit	
Attorney Docket No.	189-003.001 Hamelin

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Fee Description	Fee (\$)	Small Entity Fee (\$)	Fee Paid(\$)
Utility Filing Fee	790	395	
Design Filing Fee	350	175	
Plant Filing Fee	550	275	
Reissue Filing Fee	790	395	
Provisional Filing Fee	160	80	

Subtotal (1) \$ **0.00****FEE CALCULATION (continued)****2. EXTRA CLAIM FEES**

Fee Description	Fee (\$)	Small Entity Fee (\$)
Each claim over 20	18	9
Each independent claim over 3	88	44
Multiple dependent claims	300	150
For Reissues, each claim over 20 and more than in the original patent	18	9
For Reissues, each independent claim more than in the original patent	88	44

**Total Claims** **Extra Claims** **Fee (\$)** **Fee Paid (\$)**- 20 or HP =            x            =             
HP = highest number of total claims paid for, if greater than 20**Indep. Claims** **Extra Claims** **Fee (\$)** **Fee Paid (\$)**- 3 or HP =            x            =             
HP = highest number of independent claims paid for, if greater than 3**Multiple Dependent Claims** **Fee (\$)** **Fee Paid (\$)**Subtotal (2) \$ **0.00****3. OTHER FEES**

Fee Description	Fee (\$)	Small Entity Fee (\$)	Fee Paid(\$)
1-month extension of time	110	55	
2-month extension of time	430	215	
3-month extension of time	980	490	
4-month extension of time	1,530	765	
5-month extension of time	2,080	1,040	
Information disclosure stmt. fee	180	180	
37 CFR 1.17(q) processing fee	50	50	
Non-English specification	130	130	
Notice of Appeal	340	170	
Filing a brief in support of appeal	340	170	<b>340.00</b>
Request for oral hearing	300	150	
Other:			

Subtotal (3) \$ **340.00****SUBMITTED BY**

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**James D. Hall**

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE BOARD OF APPEALS AND INTERFERENCES

In re Patent Application of: Jean Michel Lerdu

Patent Application No.: 10/033,178

For: FENCE

Filing Date: 28 December 2001

Art Unit: 3677

Examiner: J. Schiffman

**APPLICANT'S APPEAL BRIEF**

**REAL PARTY AND INTEREST**

The real party in interest, as assignee and owner of the entire right, title and interest of the patent application is Spartech Corporation, a corporation established under the laws of the State of Delaware and located at 120 S. Central Avenue in Clayton, Missouri.

**RELATED APPEALS AND INTERFERENCES**

There are no other appeals or interferences known to the applicant or to the applicant's legal representative which will directly affect or be directly affected or have a bearing on the Board's decision in the pending appeal.

**STATUS OF CLAIMS**

Claims 1-17 are currently pending. Claims 1-17 stand finally rejected.

12/03/2004 RHEBRAHT 00000012 10033178

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340.00 OP

## STATUS OF AMENDMENTS

There have been no amendments filed subsequent to the final rejection.

## SUMMARY OF THE CLAIMED SUBJECT MATTER

The invention of the application under appeal relates to a fence generally of the type having spaced apart support posts, an upper rail and a lower rail extending between adjacent posts, and one or more generally vertical slats or boards extending between the rails. Upper rail 14 and lower rail 12 each extend between adjacent posts 18 with boards 20 extending between the upper and lower rails. (FIG. 1; p 3, ln 10-12) Each rail 12, 14 includes two opposing half parts 22, 24. (FIG. 6; p 3, ln 14) The opposing half parts 22, 24 are substantially symmetrical or mirror images of each other except for the complimentary interconnecting fastener portions 26 (FIG. 6; p 3, ln 14-16). At least one half part 22 or 24 includes a plurality of longitudinally spaced apart ribs 34 that protrude in the same direction transversely to the general longitudinal axis of the half part (FIG. 6; p 3, ln 18-20). When half parts 22, 24 are secured together with fastener portions 26, each adjacent pair of ribs 34 defines a space 40 between the adjacent ribs into which a board 20 is fitted (FIG. 6; p 4, ln 6-8).

In the preferred embodiment, each opposing half part 22, 24 includes ribs 34, which oppose each other. (FIG. 6; p 4, ln 7-8) The opposing ribs 34 define a spacer 41 that separates adjacent boards 20 (FIG. 6; p 4, ln 9-10). When opposing half parts 22, 24 are mated together, the intermediate flange 32 of lower rail 12 carries boards 20 (FIG. 10; p 4, ln 21-22), and the lower flange 36 of lower rail 12 carries posts 18 (FIG's. 7 & 8; p 4, ln 12-16). Fasteners 44 may be used to secure the posts 18 to the rails 22, 24. (p 4, ln 19-20)

In this manner, the invention provides a fence that may be easily assembled by

assembling opposing half parts 22, 24 to form the top and bottom rails 12, 14, and fitting boards 20 into the spaces 40. Posts 18 may be fitted into the ends of rails 12, 14 and secured thereto with fasteners 40. Opposing half parts 22, 24 minimize the number of separate pieces needed to form the rails 12, 14.

### **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Whether the Examiner erred in rejecting claims 1-17. Are claims 1, 6, 12 and 13 anticipated by Lauzier. Are claims 2-4 obvious over Lauzier in view of Taylor. Are claims 5, 10 and 11 obvious over Lauzier in view of Taylor and Grimm. Are claims 7-9 obvious over Lauzier in view of Taylor and Weaver. Are claims 12 – 17 obvious over Michael in view of Lauzier.

### **ARGUMENT**

This is in response to the Final Office Action of July 2, 2004. Instead of filing an answer to the first filed Appeal Brief, the examiner chose to reopen prosecution.

#### **A. §102 rejections based on Lauzier: Claims 1, 6, 12 and 13.**

Claims 1, 6, 12, and 13 stand rejected under 35 U.S.C. Section 102(b) as being anticipated by Lauzier. As mentioned throughout the prosecution of this application, including the previous submitted Appeal Brief, there is a basic difference in interpretation between the applicant and the examiner concerning the claim limitations of “half parts”, and “at least one of said parts having longitudinally spaced ribs.” First, while the rails in Lauzier are of two piece construction, they are not “half parts” as that term is used by the applicant in the specification and claims and is generally understood in the dictionary sense. Half parts 22 and 24 are

described on page 3, lines 14-16, of the applicant's specification as being essentially mirror images of each other. This is not true for parts 4, 10 and 11 in Lauzier. Nor are parts 4, 10 "one of two equal parts into which a thing is divisible" or "a part of a thing approximately equal to the remainder" as defined in Webster's 3<sup>rd</sup> International Dictionary. The examiner ignores the standard definition of "half" as used by the applicant and on page 6 of his office action cites a second dictionary meaning definition (2: one of a pair: as a: PARTNER...) that has no relation to the applicant's use of half (see in Evidence Appendix the attached dictionary definition used by the examiner).

Secondly, Lauzier items 5 are defined as openings or perforations. Item 7 in Lauzier is called a rib. In claims 1 and 12, each adjacent pair of ribs defines the space within which a board is fitted. These ribs are defined as longitudinally spaced, thus the space is being defined as between adjacent pairs of "longitudinally spaced ribs." This does not occur in Lauzier. If the examiner considers the side of each opening 5 where a slight protrusion is shown as a "rib", then the space between such sides is not longitudinally but rather transversely spaced. Further, the "longitudinally spaced ribs" carried by each of the half parts extend in the same direction. Clearly this is not seen or obvious from Lauzier no matter how one attempts to describe openings 5 or ribs 7.

Accordingly, claims 1 and 12, and depending claims 6, and 13 are neither anticipated nor rendered obvious by Lauzier.

**B. § 103 rejections based on Lauzier as modified by Taylor: Claims 2 – 4**

Claims 2 – 4 stand rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lauzier in view of Taylor. In claim 2, each of the half parts carries longitudinally spaced ribs and such ribs, when the half parts are secured together, are opposed. Somehow the examiner

believes that Taylor would cause one skilled in the art to extend the boards 3 of Lauzier through both rail parts 4 and 11 and as such somehow ends up with opposed ribs. First, such supposed substitution is absolutely not suggested or even desired for there is no reason to extend boards 3 of Lauzier through bottom rail part 11 since each of the boards 3 are snap-fitted into rail 4 for anchoring and securement purposes. Even if boards 3 in Lauzier were inserted through both parts 4 and 11, there is still no disclosure of opposing ribs formed by the half parts with each adjacent pair of opposed ribs defining a space therebetween for its board. As such, the suggested combination of Lauzier and Taylor is not feasible and appears to be based entirely upon an attempted application of hindsight. As such, claim 2 and depending claims 3 and 4 are not obvious over Lauzier in view of Taylor.

**C. § 103 rejections based on Lauzier as modified by Taylor and Grimm: Claims 5, 10, and 11**

Claims 5, 10 and 11 stand rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lauzier in view of Taylor and further in view of Grimm. Simply and basically stated, the upper and lower orientation of parts 4 and 10, 11 in Lauzier prevent the placement of any posts between the parts. To sandwich the posts between parts 4 and 10, 11 of Lauzier would require the rails (parts 4, 10 and 11) to be orientated horizontally or laid on their sides which would also cause boards 3 to be horizontal. The Grimm reference provides no assistance in suggesting that somehow a vertically oriented post could be sandwiched between upper and lower rail parts. As such, claims 5 and 10, and depending claim 11 are not obvious over Lauzier, in view of Taylor and Grimm.

**D. § 103 rejection based on Lauzier as modified by Taylor and Weaver: Claims 7 -9**

Claims 7 – 9 stand rejected under 35 U.S.C. Section 103(a) as being unpatentable over Lauzier in view of Taylor and further in view of Weaver.

The arguments relating to Lauzier and the allowability of claims 1, 3, and 4 apply equally to depending claims 7, 8 and 9, Lauzier does not disclose “half parts”, or longitudinally spaced ribs, with such ribs defining spaces therebetween. Accordingly, claims 7 -9 are not rendered obvious by Lauzier in view of Taylor and Weaver.

**E. § 103 rejection based on Michael as modified by Lauzier: Claims 12 - 17**

Claims 12 – 17 stand rejected under 35 US.C. Section 103(a) as being unpatentable over Michael in view of Lauzier. First, to review, the arguments advanced on pages 3-4 as to the allowability of claim 1 with respect to the lack of teaching in the Lauzier reference apply here also. Lauzier does not disclose, contrary to the examiner’s contentions, a half part which includes longitudinally spaced transverse ribs with each adjacent pair of such longitudinally spaced ribs defining a space there between for the purpose of accommodating a board. Additionally, ribs which extend in the same direction are not disclosed in Lauzier.

The examiner takes the position that it would be obvious to incorporate transverse longitudinally spaced ribs in Michael’s rail as disclosed in Lauzier to create a more secure connection of the rail to the board so “they are less likely to come apart.” First, the spindles 22 in Michael can not come apart since they are locked between the upper and lower rails. Thus any additional securement has no effect and would not even be considered. Secondly, boards 3 in Lauzier are secured to the upper and lower rail parts by snap-fit connections having no application in the wooden style of railing system in Michael. As such, the shape of the openings



5 in Lauzier would have no applicability, are not necessary, nor even desirable in Michael.

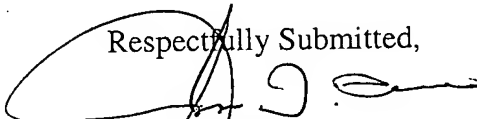
Accordingly, the combination of Michael and Lauzier does not render obvious claims 12 -16.

With regard to claim 17, the arguments concerning the inapplicability of Lauzier advanced with regard to claim 1 apply equally to claim 17 and the combination of the art cited by the examiner. Further, the arguments advanced as to the allowability of claims 12 – 16 with regard to the inapplicability of substituting any teaching shown in Lauzier into Michael also applies to claim 17. Claim 17 requires at least one of the half parts to include a plurality of longitudinally spaced transverse ribs which extend in the same direction toward the other of the half parts. Each adjacent pair of such ribs define a space into which a board is fitted. This is not disclosed in Michael as admitted by the examiner nor is it suggested in Lauzier. Lauzier, as mentioned previously, does not disclose longitudinally spaced transverse ribs that extend in the same direction with adjacent pairs of such ribs defining a space there between. Nor can the openings 5 in Lauzier be feasibly incorporated into Michael which uses an entirely different method of retaining the spindles 22 than Lauzier uses in retaining by snap-fit connection its bars or boards.

## CONCLUSION

The invention of claims 1-17 is not anticipated or rendered obvious by the cited art because the cited art fails to disclose each and every claim limitation. For these reasons, Applicant respectfully requests that the Board reverse the decision of the Examiner and hold that claims 1-17 are in a position for allowance.

Respectfully Submitted,



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## CLAIMS APPENDIX

1. A fence comprising an upper horizontal rail, a lower horizontal rail, boards extending between said rails, at least one of said rails having a separate half parts, each of said parts including a cooperating fastener for securing the parts together about said boards, at least one of said parts having longitudinally spaced ribs, said ribs extending in the same direction, each adjacent pair of said ribs defining a space therebetween, and a said board fitted into a said space with said parts secured together about said boards.

2. The fence of claim 1 wherein both of said parts have said longitudinally spaced ribs, said ribs of one of said parts being opposed to said ribs of the other of said parts when said parts are secured together with each adjacent pair of opposed ribs defining a said space therebetween.

3. The fence of claim 1 and a first vertical post extending transversely relative to said rails, said rails engaging said first post.

4. The fence of claim 3 and a second vertical post extending transversely relative to said rails, said rails engaging said second post.

5. The fence of claim 4 wherein each post fits between said parts of each of said rails.

6. The fence of claim 1 wherein both of said rails have said separate half parts, at least of one of said parts of each rail having said longitudinally spaced ribs.

7. The fence of claim 4 and a third horizontal rail located above said upper horizontal rail, each of said rails engaging said first and second vertical posts.

8. The fence of claim 7 wherein said third rail has separate half parts, each of said parts of said third rail including cooperating fasteners for securing the parts together.

9. The fence of claim 8 wherein at least one of said parts of said third rail includes longitudinally spaced ribs, each adjacent pair of ribs defining a space therebetween, a said board fitted into a said space defined between said ribs.

10. The fence of claim 4 wherein each post fits between said opposing half parts of each of said rails.

11. The fence of claim 10 wherein said lower rail carries said posts and said boards.

12. A fence comprising an upper horizontal rail, a lower horizontal rail, boards extending between said rails, at least one of said rails having a separate opposing half parts, each of said parts including a complimentary part of a cooperating fastener for securing the parts together about said boards, at least one of said parts having longitudinally spaced ribs, said ribs extending in the same direction, each adjacent pair of said ribs defining a space therebetween, and a said board fitted into a said space with said parts secured together about said boards.

13. The fence of claim 12 wherein said complimentary parts of said fastener are slidingly engageable in one direction for mechanically preventing disengagement in the opposite direction.

14. The fence of claim 13 wherein said half parts vertically oppose each other, said fastener for securing the parts about opposite sides of said boards.

15. The fence of claim 14 wherein said ribs extend transversely between said parts.

16. The fence of claim 15 wherein said opposing parts and each adjacent pair of said ribs define said space.

17. A fence comprising an upper horizontal rail, a lower horizontal rail, and boards extending between said rails; one of said rails divided into two vertically opposing half parts;

each said part including a complimentary portion of a fastener for securing the parts together about opposite sides of said board; one of said parts including a plurality of longitudinally spaced, transverse ribs extending in the same direction toward the other of the parts; said opposing parts and each adjacent pair of said ribs defining a space therebetween into which a said board is fitted when said parts are secured together about said opposite sides of the board.

## **EVIDENCE APPENDIX**

Dictionary Definition



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half[1,noun]		
half[2,adjective]		
half[3,adverb]		
half-and-half		
half-assed		
half-baked		

Main Entry: **<sup>1</sup>half**

Pronunciation: 'haf, 'h[a]'f

Function: *noun*

Inflected Form(s): *plural halves* /'havz, 'h[a]'vz/

Etymology: Middle English, from Old English *healf*; akin to Old High German *halb* half

**1 a** : either of two equal parts into which a thing is divisible;  
*also* : a part of a thing approximately equal to the remainder  
 -- often used without *of* <*half* the distance> **b** : half an hour  
 -- used in designation of time

**2** : one of a pair: as **a** : **PARTNER** **b** : **SEMESTER**, **TERM** **c** :  
 either of the two equal periods that together make up the  
 playing time of some games (as football); *also* : the  
 midpoint in playing time <the score was tied at the *half*>

**3** : **HALF-DOLLAR**

**4** : **HALFBACK**

- **by half** : by a great deal

- **by halves** : in part : **HALFHEARTEDLY**

- **half again as** : one-and-a-half times as <*half again as*  
*many*>

- **in half** : into two equal or nearly equal parts

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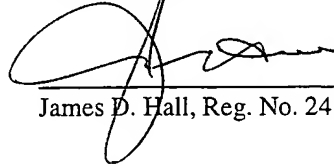
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James D. Hall, Reg. No. 24,893